[Mr. Kayalam Parameswaran Pillai.]

to their marriage. The preamble itself indicates it by the expression "the removal of all *legal obstacles* to the marriage of Hindu widows". To me it appears that there can be a little doubt that the principle of this Bill is to legalise the marriage of such widows and this principle will, I dare say, be acceptable to all. If Mr. Govidan or Mr. Anirudhan wants any ambiguity or apprehensions in this respect to be removed it can be done by bringing in proper amendments. Now we are concerned with only the *principle* of the Bill, a principle that has been accepted by another Chamber.

President : The motion before the House is that the Travancore Hindu Widows' remarriage Bill be taken into consideration.

The motion was put to vote and carried.

The principle of the Bill was accepted by the House.

SECOND READING OF THE TRAVANCORE HINDU WIDOWS REMARRIAGE BILL.

Clause 1.

The question that Clause 1 do form part of the Bill was put to vote and carried.

The Clause was added to the Bill.

Clause 2.

The question that Clause 2 do form part of the Bill was put to vote and carried.

The Clause was added to the Bill.

Clause 3.

The question that Clause 3 do form part of the Bill was put to vote and carried.

The Clause was added to the Bill.

Clause 4.

Mr. G. Narayana Aiyar : (*Parur, Kunnatnad and Muvattupuzha cum Devicolam*) : There are two amendments to clause 4. The first amendment is "in line 6 ; after words "sixteenth year" add the following "or whose marriage has been consummated" and after the words "shall be" add "presumed until the contrary is proved and". The object of the Bill, as could be seen from the preamble is, "the removal of all legal obstacles to the marriage of Hindu widows in the State and *for the promotion of good morals* and for the public welfare". That being the case, all facilities for the marriage of widows have to be allowed unless it is proved that such marriage is unjustifiable. Now the climatic conditions in Travancore are such that, girls attain puberty at the age 12 and in

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certain cases before the age of 12. The child-bearing age is usually stated to be 14. Now there are certain people who on orthodox principle or some other causes may not be willing to have their widowed daughters remarried. The Section says "A widow who has not completed her sixteenth year shall not remarry without the consent of her father, if she has no father, of her mother, or if she has no mother, of her elder brother, or failing also elder brothers, of her next male relative". To establish the validity of a marriage before attaining the age of 16, the consent of the above said persons is said to be absolutely necessary. There may be cases in which the parents object to the remarriage of the widow or she may choose her own man and the parents another man. Then there will be a conflict. Suppose there is a case in which, without the consent of her guardians, she gets married before the age of 16 what will be the position? Is the marriage valid ? Are the children legitimate? In this connection we have to see the position adopted in British India. The mover of the Bill herself has admitted and it is admitted by the members here that this is a copy of the Bill introduced in British India. What does act XV of 1586 say ? Section 4 of this Bill is, as it were, a reproduction of Section 7 of the British Indian Act. Section 7 says :—

> "If the widow re-marrying is a minor whose marriage has not been consummated, she shall not re-marry without the conset of her father, or if she has no father, of her paternal grandfather, or if she has no such grandfather, of her mother, or, failing all these, of her elder brother, or failing also brothers, of her next male relative.
>
> All persons knowingly abetting a marriage made contrary to the provisions of this section shall be liable to imprisonment for any term not exceeding one year or to fine or to both.
>
> And all marriages made contrary to the provisions of this section may be declared void by a court of law ; Provided, that in any question regarding the validity of a marriage made contrary to the provisions of this section, such consent as is aforesaid shall be presumed until the contrary is proved, and that no such marriage shall be declared void *after it has been consummated.*
>
> In the case of a widow who is of full age, or *whose marriage has been consummated,* her own consent shall be sufficient to constitute her re-marriage lawful and valid."

There it has been specifically laid down that if it is the desire of the girl to get re-married, and the marriage has been conducted and consummated such marriage has to be respected as legal marriage and the children of such marriages as legitimate inspite of want of consent. When the legislature in British India, which we follow in almost all cases, lays down like that, why should we go against it ? I cannot understand the justification for omitting it. This provision was there in the Bill as originally drafted. It was only during the Select Committee stage that it was omitted. With

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[Mr. G. Narayana Aiyar.]

due respect to the honourable members who took part in the Select Committee meetings, I ask that if you are really convinced that this is a necessary amendment, you will kindly support it since it only goes to extend the facilities for such marriages. In this connection I wish to refer to the Malabar Act IV of 1846. I shall read certain relevant portions of the Section.

Section 3.

"A Sambandham between Hindus both or either of whom follow the Marumakkathayam or the Aliyasantana Law of Inheritance may be registered under this Act as hereinafter provided subject to the following conditions :—

(*a*) neither party must be subject to a personal law of marriage according to which he or she, as the case may be, cannot validly contract a marriage with the other party ;

(*b*) the relation of the parties must not be such in respect of consanguinity or affinity that a Sambandham between them is prohibited by any custom or usage applicable to the community to which they belong or either of them belongs ;

(*c*) neither party must at the date of the notice under section 5 have a husband or wife living whose Sambandham with her or him has been registered under this Act and which marriage is not null and void under section 15 or with whom she or he is otherwise legally married ;

(*d*) the parties must not belong to different communities between the members of which, according to the custom or usage applicable to either community, cohabitation is prohibited ;

(*e*) the Sambandham must have been formed in accordance with the customary ceremonies, if any, prevailing in the community to which they belong or either of them belongs ;

(*f*) a party to a Sambandham who is a minor *must have obtained the consent of his or her legal guardian* to the registration of the Sambandham as a marriage.

This subsection (*f*) is the most important portion we have to consider in this connection. Then we have to see how is this consent construed later on in the Act itself. In the condition of consent a condition absolutely necessary for the validity of marriage or only a formality or only an irregularity which will not vitiate a marriage if otherwise valid. The consent referred to above in subclause (*f*) is only a formality will be clear from a reading of section 15 which runs as follows :—

"(1) A marriage shall be null and void only—

(*a*) if either party is subject to a personal law of marriage according to which he or she, as, the case may be, cannot validly contract a marriage with the other ;

(*b*) if a relationship can be traced between the parties through some common ancestor who stands to each of them in a nearer relationship than that of great great-grandfather or great-great-grandmother,

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and by reason of such relationship a Sambandham between them is prohibited by any custom or usage applicable to the community to which they belong or either of them belongs ;

(c) if either party has a husband or wife living whose Sambandham with such party has been registered as a marriage under this Act and such marriage is not null and void under clauses (a) and (b) of sub-section (1) or with whom she or he has been otherwise legally married.

(2) A marriage *shall not be invalid on the ground that the Sambandham or registration contravenes any of the grounds mentioned in section 3* other than those specified in clauses (a), (b) and (c) of sub-section (1)."

The provisions of the sub-section referred to above will show that want of consent referred to in section 3 will not make the marriage illegal if the marriage has been consummated. After all it is only a formality.

I submit that it is a subject which deserves the kind consideration of this house. I hope the honourable members will consider the evil effects that will be produced if that amendment is not allowed. We must consider well the condition of such widows and the children born to them. With these words I commend the amendment for the acceptance of the House.

Mr. M. Govindan : May I know from the member exactly how the particular amendment that he is proposing would help the widow and her children ?

Mr. G. Narayana Aiyar : The Section as it is is—

"A widow who has not completed her sixteenth year shall not remarry without the consent of her father, if she has no father, of her mother, or if she has no mother, of her elder brother, or failing also elder brothers, of her next male relative".

So, if she marries without the consent of these relatives the marriage becomes legally null and void. That is not the object of this legislation.

Mr. M. Govindan : What is the effect of the specific amendment proposed by my friend ?

Mr. G. Narayana Aiyar : So such marriages as are conducted and consummated even without such consent should also be regarded as legal. My amendment is "in line 6, after the words 'sixteenth year' add the following 'or whose marriage has been consummated' and after the words 'shall be' 'add "presumed until the contrary is proved and". Then the clause as amended will read like this : "in the case of a widow who has completed the sixteenth year or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her remarriage lawful and valid".

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Mr. M. Govindan : That only restricts the scope.

Mr. G. Narayana Aiyar : No, it widens. It is said in the former portion of the Section that consentis absolutely necessary.

President : The honourable member has made himself perfectly clear.

Mr. R. V. Thomas : I second the amendment.

Mr. K. R. Elankath : Sir, I rise to oppose the amendment. The argument that has been advanced by my friend in favour of his amendment is that in our country the puberty period begins very early and it ranges from the age of eleven to fourteen generally. He states that if a widow who is below sixteen wants to get herself married and if there is unreasonable opposition from her relatives whose consent is required she will be at a disadvantage and not able to effect legal marriage according to the provisions of the section. Sir, the object of every Regulation is to make restrictions wherever it is necessay. In these days when child marriage is not advocated and even professed to be undesirable by all social reformers I am very much surprised to find my honourable friend favouring, or rather advocating in the case of widows, the system of child marriage. Sir, I should think that this provision is an improvement on the British Indian Act so far as the age limit is lowered for the widow to marry without the consent of the legal guardian. In British India the age limit is fixed at 18 but here it has been lowered to 16. It is all the more the reason why we should object to the marriage being effected without the consent of the legal guardians or relations of the girl concerned. With these words I oppose the amendment.

Mr. Kottur Kunjukrishna Pillai : Sir, I also oppose the amendment. I am in sympathy with the proposer of this amendment in his desire to give more freedom to widows to remarry. But I think that these restrictions have been made after a full consideration, because this point was raised in another place when the question was taken up, and it was thought necessary to satisfy less advanced opinion of the communities affected by this legislation framed to keep some sort of restrictions with regard to marriage. Practically I do not think that there will be much of difficulty in putting this restriction on widows below the age of 16 for getting themselves married only after getting the consent of their parents or other persons proposed in the bill. Theoretically it may be admitted that once when the widow remarriage is to be facilitated and when once you want to give them opportunities for getting themselves married why not go the whole way and give them the full freedom in the matter. Sir, what the honourable member proposes as an alternative to the attainment of the age of 16

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is consummation. And so far as consummation is concerned among the Brahmins I may admit there are definite ceremonies which may prove consummation easily. But this bill affects other people also among whom I do not know that there exists such regular ceremonies in connection with consummation——

Mr. M. K. Anandasiva Aiyar: Sir, may I correct the honourable member? There is no such ceremonies in the case of remarried widows.

Mr. Kottur Kunjukrishna Pillai: I was not talking about the marriage of widows. I was talking of consummation. Therefore I am against—positively against—giving a premium to consummation. The girl must either attain the age of 16 if she should marry without the consent of her relatives or she must have the necessary consent. Even if a girl gives birth to a child that should not be taken as a reason for legalising her marriage without consent. That is giving a premium on widows who choose not to exercise sufficient self-control and I think that should not be allowed. With regard to the other part of the amendment which accepts a fact and legalises it that it has been accomplished and makes it valid I have very great sympathy with that portion. I do not think that it is going to work very great hardship if we do not provide for it. Therefore I request the House to pass this legislation without the amendments which seem to me to be quite unnecessary.

Mr. N. V. Chacko: Sir, the tendency of modern times is to postpone the age of marriage of girls. The prevailing idea seems to be that marriage should not take place before the girls are 16 years of age. If that be the spirit of the times with regard to the first marriage of girls, certainly they should not be allowed to re-marry before they are 16. Any girl may be able to plead consummation as an excuse. We should not leave room for girls to make any such excuse falsely. (*Laughter*). For these reasons I oppose the amendment.

Mr. James Fletcher (*Kalkulam and Vilavankod* cum *Neyyattinkara*): Sir, I oppose the amendment for the following reasons. The law as it stands says that a widow who has not completed her 16th year shall not remarry without the consent of one of her guardians. Now the present amendment wants to make it easy or possible for the widow to remarry before she is 16 without the consent of her near relatives or guardians. I would state that will be a dangerous amendment. A widow who is below 16 cannot be expected to choose a husband with due discretion without the consent of her guardians. The choice of a girl below the

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[Mr. James Fletcher.]

age of 16 without the help or advice of her relatives will be bad choice. Hence, the marriage of that sort should not be legalised.

Secondly, I may state that in British India, the marriageable age is fixed at 14. As matters stand, it is best to have the marriageable age raised to 16. And therefore, if for any special reasons a widow wants to get herself remarried before 16 let her get the consent of her parents or of her other legal guardians. Mr. G. Narayana Aiyar said that because of the consummation we have to legalise the marriage. I would suggest that it is giving a premium for erring in life. When we legalise such marriages we are indirectly allowing consummation also. With these words, I oppose the amendment.

Mr. Kayalam Paramesvaran Pillai : Sir, the Government are not taking any sides in regard to this amendment. But I think that I may just explain what the scopes or effect of the amendment is. The amendment, it may be said at once, seeks to bring the law into line with the law as it is in British India. On the merits of the amendment I may say that it contains two parts. One is intended, as it has been put, to facilitate the marriage of widows who are below 16 years of age. That aspect of the amendment has already received sufficient attention at the hands of the honourable members and I have no doubt that they will use their discretion in voting upon it. Coming to another aspect, Mr. Narayana Aiyar said that the marriages in question should be legalised for the sake of the children who are born as a result of the consummation. This has not perhaps received sufficient attention, but I am glad that Mr. Fletcher who proceeded be referred to that aspect also, and I am content to leave it there. I trust that the House will consider both the aspects in voting on this amendment.

The amendment was put to the vote of the House and lost.

Amendment No. 3.

Mr. G. Narayana Aiyar : Sir, I beg to move that at the end of clause 4 the following proviso may be added :

> "Provided that no marriage contracted contrary to the provisions of this Regulation shall be declared void after it has been consummated."

The arguments which were advanced in regard to the first amendment also applies to this as well. There is no provision in the bill regarding formalities compulsory for the marriage of a widow. No formality is necessary for consummation. Such a provision finds a place in the British Indian Act and nothing was brought out to show the necessity for deviation in this matter. The

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progressive sentiment amongst all communities is to give greater freedom for women. As such it is advisable to accept the amendment. I request the honourable members of the House to allow the amendment.

This is intended as a safeguard in such cases.

I may also bring to the notice of the House that provisions in the Travancore Penal Code in regard to rape are not now sought to be amended. Under Section 375 T. P. C. sexual intercourse by a man with his wife a girl who has completed the age of 12, is not rape. That provision shows that a girl above 12 can give a legally valid consent for cohabitation. I cannot therefore understand the provision in this Bill fixing the age at 16 and insisting on consent of relatives for marriage even after 12. Also, for the arguments that I have already advanced in support of my previous amendment, I request the House to accept this amendment.

Mr. R. V. Thomas : I second it.

The amendment was put to vote and lost.

The question that Clause 4 do stand part of the Bill was put to vote and carried.

The Clause was added to the Bill.

Clauses 5 to 7.

The question that Clauses 5, 6 and 7 do stand part of the Bill was put to vote and carried.

The Clauses were added to the Bill.

Preamble.

Mr. G. Narayana Aiyar : Sir, I beg to move that, in line 3 of the Preamble, after the word 'legitimate' the semicolon be omitted and the expression 'and capable of inheriting property' be added.

Sir, it is well known that even the slightest doubt and ambiguity is made much of in courts of law and arguments are built upon them. A lot of unnecessary litigation is likely to result unless the provisions of statutes are absolutely clear.

I am sure honourable members will grant that children who are declared legitimate must be capable also of inheriting property. It is merely to put it beyond doubt and to make it clear, and to avoid all possible intricacies that I move this amendment.

The amendment fell through for want of seconding.

The Preamble was put to vote and carried.

The Preamble was added to the Bill.

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Title.

The question that the Title form part of the Bill was put to vote and carried.

The Title was added to the Bill.

Third Reading.

Mr. Kayalam Parameswaran Pillai : Sir, we are now at the third reading of the Bill. In view of the doubts raised by Mr. Anirudhan, I would propose the following amendment in clause 1.

Clause 1.

Add the following as an Explanation to Clause 1 :

"Explanation : Unless there be anything repugnant in the context, the term *Hindu* used in this Regulation means any person governed by the Hindu Law".

The expression 'Hindu Law' is a technical expression and is well understood and will not be understood to include for example the Malabar Law and persons governed by the Hindu Law form a well defined community and there can be no mistaking about it. If this amendment is accepted, the doubts raised by Mr. Anirudhan will not arise.

Mr. C. Kumara Das : I second it.

Mr. Kottur Kunjukrishna Pillai : I accept it.

The amendment was put to vote and carried.

Mr. Kottur Kunjukrishna Pillai : I move that the Bill, as amended, be passed.

Mr. K. R. Elankath : I second it.

The question that the Bill, as amended, be passed, was put to vote and carried.

The Bill was passed.

THE TRAVANCORE TRANSFERS AND BEQUESTS TO UNBORN PERSONS BILL.

Mr. G. Narayana Aiyar : I move that the Bill be read in Council.

Mr. N. Abdur Rahiman Sahib : I oppose the Bill.

President : It has not been seconded yet.

Mr. Kottur Kunjukrishna Pillai : I second it.

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